SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

Opinion No. 1124

JAN 26 1976

FILED

VIRGINIA B. SIEGEL
Petitioner

v.

Tax Number 2186

DISTRICT OF COLUMBIA
Respondent

MEMORANDUM OPINION

This matter is before the Court on cross motions for summary judgment. Both parties stipulate there is no genuine issue of material fact. The sole legal issue is resolved by an interpretation of 47 D.C.C. §1557(b)(13), a section of the District of Columbia Income Tax Act, which provides in pertinent part:[1/] "The election to claim the optional standard deduction, or to itemize deductions, shall be irrevocable for the taxable year for which the

1/ 47 D.C.C. §1557(b)(13) provides in its entirety:

> Optional standard deduction and irrevocable election. —In lieu of the foregoing deductions, any resident may elect to deduct for the taxable year an optional standard deduction of 10 per centum of the adjusted gross income or $1,000, whichever is lesser; in the case of joint returns filed by husband and wife living together, the combined standard deduction shall be limited to 10 per centum of the adjusted gross income of both, or $1,000, whichever is lesser; in the case of separate returns by husband and wife living together, the standard deduction of each spouse shall be limited to 10 per centum of the adjusted gross income of that spouse or $500, whichever is lesser, but the standard deduction shall be allowed to neither if the net income of one of the spouses is determined by itemizing the deductions. The option provided in this paragraph shall not be permitted on any return filed for any period less than a full calendar or full fiscal year.
>
> The election to claim the optional standard deduction, or to itemize deductions, shall be irrevocable for the taxable year for which the election is made.

election is made." For reasons stated hereinafter, petitioner's motion for summary judgment is granted, and respondent's motion is denied.

THE FACTS

Petitioner, a resident and taxpayer of the District of Columbia, itemized deductions on her 1970 Individual Income Tax Return. Included as a deduction was $1000 which represented a legal fee incurred in connection with a lawsuit affecting income producing property. Petitioner believed, in good faith, this was an allowable deduction as a non-trade or nonbusiness expense pursuant to 47 D.C.C. §1557(b)(12)[2/]. The remaining itemized deductions consisted of charitable contributions and taxes totaling $345.10.

After having timely filed her 1970 District of Columbia Individual Income Tax Return on April 15, 1971, petitioner was, in February 1972, assessed by the District of Columbia Government an additional tax liability of $80, plus $4.40 interest and penalties for the 1970 taxable year. Upon written inquiry of the Department of Finance and Revenue, petitioner determined that the additional assessment was imposed because the Government had disallowed her $1000 legal fee as a deduction.

Petitioner does not contest the disallowance of her legal fee as a deduction, but rather contends she should be allowed to utilize the standard deduction method, rather than be compelled to utilization of the itemized deduction method she originally employed. Under the standard deduction method, petitioner is entitled to deductions totaling

2/ 47 D.C.C. §1557(b)(12) provides:

> Nontrade or nonbusiness expense. —In the case of an individual, all the ordinary and necessary expenses paid or incurred during the taxable year for the production or collection of income, or for the management, conservation, or maintenance of property held for production of income taxable under this subchapter.

$1000 or 10% of her gross income, whichever is lesser. Thus, under the standard method, the additional tax owed by petitioner is $27.61, rather than $80, which represents her liability under the itemized deduction method.

The Department of Finance and Revenue does not challenge the good faith or reasonableness of petitioner's belief that the legal fee was an allowable deduction. However, relying on the statutory provision challenged here, it rejected her contention that she is entitled to benefit from the standard deduction method. Thereafter, petitioner remitted $27.61, due under the standard method. In addition, she paid to the District of Columbia Treasury, under protest, the sum of $56.95, representing the additional tax plus accrued interest and penalty demanded by the Government under the itemized deduction method. Subsequent to rejection of petitioner's claim for refund by the Department of Finance and Revenue, petitioner filed a Petition for refund in this Court.

Petitioner challenges the "irrevocable election"[3/] provision on constitutional, as well as on equitable grounds. Her attack on the statute is three-fold.

While petitioner agrees with the government's contention that a literal reading of the relevant provisions of 47 D.C.C. §1557(b)(13) would support the interpretation urged by the government—that a taxpayer's choice of method made at the time of filing an Income Tax Return is indeed irrevocable, she argues that such a literal construction of the statute flies in the face of the equitable doctrine of "election." She further contends that the statute is constitutionally infirm on due process and equal protection grounds.

Petitioner asserts her constitutional right to due process of law has been abridged because the govemment

3/ 47 D.C.C. §1557(b)(13).

has imposed a penalty upon the exercise of her statutory right to itemize deductions, without affording her notice and an opportunity to be heard.

Finally, petitioner claims that she was denied equal protection of the law,[4] because the District of Columbia has created an arbitrary classification of taxpayers based on whether a taxpayer initially elected to take the itemized or standard deduction,[5] contending that the classification has no rational relationship to the purpose of the statute.

THE LAW

While the Court finds petitioner's constitutional challenges to the statute to be substantial, it is unnecessary to decide the question since the case can be disposed of on other grounds. It is axiomatic that courts should avoid deciding constitutional issues when the case can be decided on other grounds. Wood v. Strickland, U.S. , 95 S. Ct. 992 (1975); United States v. Thirty-Seven Photographs, 402 U.S. 363 (1971); Rosenberg v. Fleuti, 374 U.S. 449 (1963); Barr v. Matteo, 355 U.S. 171 (1958); United States v. Rumley 345 U.S. 41 (1953); Youngstown Sheet and Tube Co., v. Sawyer, 343 U.S. 579 (1952); Sohm v. Fowler, 124 U.S. App. D. C. 382 365 F. 2d 915 (1966). See also Doe v. Martin, ___ U.S. App. D.C. ____, 103 D.W.L.R. 2113 (decided October 22, 1975).

A superficial reading of the statutory command that "the election ... shall be irrevocable ..." would seem to support the government's position that once a taxpayer has determined to take either the itemized or standard deduction, and

4/ While there is no equal protection clause specifically applicable to the Federal Government, it is established that the due process clause of the Fifth Amendment forbids discrimination in much the same manner as the equal protection clause of the Fourteenth Amendment. Bolling v. Sharpe, 347 U.S. 497, 499 (1954).

5/ Analysis of the pertinent sections of the Federal Internal Revenue Code reveals that the Code specifically allows a substitution of elections. See 26 U.S.C. §144(a)(b) and (c).

dispatched the return to the District of Columbia taxing authorities, one may never amend the return by switching to another method of deduction. Such is the Government's contention. However, this contention fails to take into account the true nature of an "election." It also overlooks the fact that petitioner's patent intention at the time of her choice of methods was to receive the maximum benefit from the tax deductions allowed by law.

No precedent has been discovered dealing with the section of the District of Columbia Income Tax Act here involved. Moreover, resort to the Federal Internal Revenue Code is of no assistance because the statutory law is different. There is no such bar as the "irrevocable election" section of the District of Columbia Act.

In pertinent part 26 U.S.C. §144(b) and (c) provide:

> (b) Change of election - Under regulations prescribed by the Secretary or his delegate, a change of election with respect to the standard deduction for any taxable year may be made after the filing of the return for such year ...
>
> * * * * *
>
> (c) Change of election defined - For purposes of this title, the term "change of election with respect to the standard deduction" means—
>
> (1) a change of an election to take (or not to take)the standard deduction:

Thus, the Federal Code seems to have a far more reasonable provision for taxpayers who make honest, and innocent mistakes in the utilization of the optional methods of deduction.

Since judicial precedent is absent and Federal law is of no assistance, it is necessary to scrutinize principles of equity to ascertain if the law allows petitioner a remedy. It is concluded equity affords a remedy.

The principle of "election" is of equitable origin. It has been employed in various areas of substantive law;

notably contracts, agency and wills. Stripped of all ambiguity, "election means that one upon whom inconsistent rights are conferred has his choice as to which he will take, but he cannot have both." Albert v. Martin Custom Made Tires Corp., 116 F. 2d 962 (2d Cir. 1941); American Woolen Co. v. Samuelsohn, 226 N.Y. 61, 123 N.E. 154 (Ct. App. 1919). The right to choose between inconsistent rights is known as election.

Although a choice freely and knowingly made is binding and "irrevocable" under the doctrine of "election," it is not so where the choice is based upon a reasonable mistake as to essential facts necessary to make an informed choice. Albert v. Martin Custom Made Tires Corporation, supra; Driscoll Realty, Inc. v. Dover Shopping Plaza, Inc., 108 N.H. 311, 234 A. 2d 530 (N.H. 1967). In Driscoll, supra, the Court stated, at 533:

> 'An unsuccessful attempt to claim a right or pursue a remedy to which a party is not entitled, will not deprive him of that to which he is entitled.' (Citation omitted.)

Further developing the doctrine of "election," the Tenth Circuit, in First National Bank of Wichita v. Luther, 217 F. 2d 262 (10th Cir. 1954), declared at 266:

> Where two modes of redress are available in a given situation but are so inconsistent that the assertion of one amounts to negation of the other, the deliberate choice of one, with knowledge or means knowledge of such facts as would authorize resort to each, precludes the invoking of the other. (Citations omitted, italics supplied.)

Questions of election most frequently arise in the areas of elections to accept or renounce wills,[6/] and in contract

6/ 5 Page on Wills, Chapter 47, pp. 593-694, (3rd ed. 1962).

actions where fraud is alleged.[7] Cook v. Commercial Cas. Ins. Co., 160 F. 2d 490 (4th Cir. 1947).

Where an elector seeks to withdraw an election to accept or renounce a will, the weight of authority is that a voluntary election is irrevocable and cannot be changed merely because the elector has had a change of heart.[8] But a party who acts without adequate knowledge of his rights and circumstances which affect their value may avoid an "election."[9]

Mistakes which will permit an elector to set aside a will include ignorance of the will's provisions affecting an elector's rights, In re McCutcheon's Estate, 283 Pa. 157, 128 A. 843 (1925); mistake as to the amount and value of the estate, Page, supra, §47.29, p. 674, n. 12, and mistake as to legal rights.

Deductive reasoning dictates that the foregoing discussion of the equitable doctrine of "election" and legal principles governing the instant case lead to the conclusion that one who deliberately selects between two alternate, mutually exclusive rights, remedies or modes of redress is irrevocably bound by that choice, provided that the choice is made with knowledge or means of knowledge of such facts as would authorize resort to each. Lack of knowledge of all material facts prevents a choice from being an "election," and ergo from being "irrevocable." Applying these principles to the instant case, it is clear that petitioner may avoid her choice to itemize her deductions on her 1970 District of Columbia Income Tax Return.

Seeking to maximize her deductions and minimize her taxes, petitioner chose to itemize her deductions totaling

7/ Dickson v. Patterson, 160 U.S. 584 (1896).

8/ 5 Page on Wills, supra, §47.30 p. 672, n. 2 (3rd ed. 1962).

$1,345.10. One thousand dollars of that amount was a legal fee which she incurred in the "management, conservation, or maintenance of property held for the production of taxable income." This was an expense she, in good faith, and upon reasonable grounds, believed was deductible under the provisions of 47 D.C.C. §1557(b)(12).

It cannot be doubted that had petitioner known the legal fee was not deductible at the time she filed her return, she would have chosen to utilize the optional standard deduction. Not until amost a year later did the taxpayer have any reason to believe that the legal fee was not deductible. Thus, not until February 1972, when notified by the Department of Finance and Revenue that her deduction had been disallowed did she have knowledge, or means of knowledge, of such facts as would allow her to make an informed choice reflecting which method she should knowingly use, in order to accomplish her goal.

There was no means for petitioner reasonably to gather all material facts bearing on her decision prior to filing her return. She had no knowledge or means of knowledge of any procedure which would have allowed her to obtain an advance ruling from the District of Columbia's Department of Finance and Revenue.

It is clear from the record that no advance ruling procedure existed of which the public had notice.[10/] Thus, the taxpayer was not on notice that a possible advance ruling could be obtained. Having determined that the taxpayer is not chargeable with knowledge of any advance ruling procedure, it is clear she was not in possession of all material facts essential to an informed choice. Therefore, no binding "election" occurred.

10/ There may have been some informal procedures available to taxpayers.

Hence, Ms. Siegel may avoid her selection and file an amended 1970 District of Columbia Individual Income Tax Return with an election of a standard deduction. To hold otherwise would result in a forfeiture, as well as the imposition of a penalty on innocent and mistaken conduct contrary to the equitable doctrine of "election." It would also be contrary to the well recognized rule of statutory construction that a court will not imply a legislative intention to impose a penalty unless such intention is clearly manifest. 3 Sutherland, Statutory Construction, §59.03, p. 6 (4th ed. 1973). Moreover, to construe the statute without recognition of the equitable exceptions would raise serious questions of constitutionality. A construction which avoids such questions is to be favored. Id., supra, 2A at §45.11, p. 33.

CONCLUSION

In view of the foregoing, petitioner's motion for summary judgment must be, and hereby is granted. Correspondingly, respondent's motion for summary judgment must be, and hereby is denied. This Opinion constitutes findings of fact and conclusions of law.

HARRY TOUSSAINT ALEXANDER
JUDGE

January 5, 1976

Copies to: Benjamin Feld, Esquire
Counsel for Petitioner

Melvin J. Washington, Esquire
Counsel for Respondent

Ms. Virginia B. Siegel
Petitioner

SERVED AS FOLLOWS: Jan. 26. 976

Benjamin Feld, Esq.
Attorney for Petitioner
5115 Wickett Terrace
Bethesda, Md. 20014

Finance Office, D. C.

Melvin J. Washington, Esq.
Assistant Corporation Counsel, D. C.

Mae W. Thomas

Mae W. Thomas
Chief Deputy Clerk